

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**R.A. JR. (a minor child, by and through his
Father and next friend, Richard Lemmel
Arnold,**

Plaintiff,

vs.

**DEPUTY SHERIFF WALTER LACEY,
in his official and individual capacity,**

Defendant.

Case No.: CV-3:06-cv-337-WHA

DEFENDANT’S MOTION TO STRIKE

COMES NOW the Defendant, Walter Lacey, and moves this Honorable Court to strike certain evidence submitted by the plaintiff in opposition to defendant’s Motion for Summary Judgment. As grounds for said motion, defendant would show as follows:

1. Defendant moves to strike plaintiff’s Exhibit 3 – plaintiff’s medical records; plaintiff’s Exhibit 4 – plaintiff’s medical records; plaintiff’s Exhibit 13 – letter dated October 26, 2005; and portions of plaintiff’s Exhibit 16 – Affidavit of Stephanie Arnold.

2. Defendant moves to strike plaintiff’s Exhibit 3 and 4, plaintiff’s medical records, on the grounds that these records have not been authenticated pursuant to Rule 901 Federal Rules of Evidence, contain inadmissible hearsay pursuant to Rule 802 Federal Rules of Evidence, and are irrelevant pursuant to Rules 401 and 402 Federal Rules of Evidence because they do not establish any causal connection between the alleged incident made the basis of this lawsuit and the information contained in the records.

3. The defendant moves to strike plaintiff’s Exhibit 13, a letter dated October 26,

2005 from Stephanie Arnold to the Macon County Commissioner's office, on the grounds that it contains inadmissible hearsay, contains self-serving conclusory allegations, and is irrelevant to the issues presently before the Court. (Rule 401, 402, and 802 Federal Rules of Evidence).

4. The defendant further moves to strike a portion of plaintiff's Exhibit 16 – Affidavit of Stephanie Arnold. In Ms. Arnold's Affidavit, she testifies as follows: "my son R.A., Jr. was assaulted by a sheriff's deputy with a baton on October 7, 2005."

Rule 56e of the Federal Rules of Civil Procedure provides that affidavits "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." In determining the admissibility of testimony contained in an affidavit, a court should utilize the same standards as would be used at trial. White v. Wells Fargo Guard Services, 908 F.Supp 1570, 1577 (MD Ala.1995). As a result, in ruling on summary judgment motions, a court should not consider inadmissible hearsay.

Defendant moves to strike the aforementioned information contained in Ms. Arnold's Affidavit on the grounds that it is inadmissible hearsay. Ms. Arnold does not testify that she was present for this alleged action. In fact, it is undisputed that Ms. Arnold was not present during the alleged altercations between the plaintiff and the defendant. Accordingly, Ms. Arnold does not have any first hand knowledge of the aforementioned information contained within her affidavit. Accordingly, defendant's Motion to Strike is due to be granted.

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, the defendant respectfully moves the Court to strike plaintiff's Exhibits 3, 4, 13, and portions of plaintiff's Exhibit 16 to plaintiff's response to defendants' Motion for Summary Judgment.

/s/ C. Winston Sheehan, Jr.

C. WINSTON SHEEHAN, JR.

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2007, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following registered persons and that those persons not registered with the CM/ECF system were served by U.S. mail:

Hon. Arlene M. Richardson
Richardson Legal Center, LLC
Post Office Box 971
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/s/ C. Winston Sheehan, Jr.
OF COUNSEL